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15 Attorneys for Plaintiff
16 UNITED STATES OF AMERICA

17 UNITED STATES DISTRICT COURT

18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA,

20 No. CR 15-191-SJO

21 Plaintiff,

22 STIPULATION REGARDING RESTITUTION

23 v.

24 TODD EDDIE BENSE,

25 Defendant.

26 Plaintiff United States of America, by and through its counsel
27 of record, the United States Attorney for the Central District of
28 California and Assistant United States Attorney Scott Paetty, and
defendant TODD EDDIE BENSE, both individually and by and through his
counsel of record, Eric A. Chase, hereby stipulate as follows:

1. On April 4, 2016, defendant Todd Eddie Bense ("defendant"),
pursuant to a plea agreement (Dkt. No. 27), pleaded guilty to count
four of a five-count indictment in this matter, specifically receipt
of child pornography in violation of 18 U.S.C. §§ 2252A(a)(2)(A),
(b)(1).

1 2. On June 8, 2015, the United States Probation Office
2 ("USPO") filed its Presentence Investigation Report ("PSR") (Dkt. No.
3 30) in this matter.

4 3. In the PSR, USPO determined that restitution in this case
5 is applicable pursuant to 18 U.S.C. § 2259, which prescribes
6 mandatory restitution for sexual exploitation and other abuse of
7 children, committed on or after September 13, 1994, and charged under
8 the provisions of 18 U.S.C. §§ 2251-2258, 2260. (PSR ¶ 102.) In the
9 plea agreement, defendant agreed to pay restitution to any victim
10 losses suffered by that victim as a result of relevant conduct.

11 (Plea Agreement ¶ 7.)

12 4. On July 5, 2016, the government filed its sentencing
13 position (Dkt. No. 31) which stated that the government was in the
14 process of gathering information from the victims regarding
15 restitution.

16 5. To date, six victims have submitted restitution requests.

17 6. In Paroline v. United States, 134 S. Ct. 1710, 1722 (2014),
18 the Supreme Court held that "[r]estitution is proper under 18 U.S.C.
19 § 2259 only to the extent the defendant's offense proximately caused
20 a victim's losses." In applying the statute's causation
21 requirements, the Supreme Court determined that "victims should be
22 compensated and defendants should be held to account for the impact
23 of their conduct on those victims, but defendants should only be made
24 liable for the consequences and gravity of their own conduct, not the
25 conduct of others." Id. The Supreme Court recognized that the
26 amount would not be severe in cases where the nature of the causal
27 connection between the conduct of a possessor, like Paroline, and the

1 entirety of the victim's general losses from the trade in her images,
2 which are the product of the acts of thousands of offenders. Id. at
3 1727. Nevertheless, the Court noted that the amount of restitution
4 should not be a "token or nominal amount." Id. The Court concluded
5 that "the required restitution [should] be a reasonable and
6 circumscribed award imposed in recognition of the indisputable role
7 of the offender in the causal process underlying the victim's losses
8 and suited to the relative size of that causal role." Id. Such a
9 restitution award would serve the "twin goals" of (1) the victim
10 eventually receiving restitution for all losses resulting from the
11 continued circulation of the images and (2) impressing upon offenders
12 the fact that even the offense of simple possession of child
13 pornography affects real victims. Id.

14 7. In United States v. Galan, 804 F.3d 1287, 1291 (9th Cir.
15 2015), the Ninth Circuit required that restitution awards in child
16 pornography cases "disaggregate" harms and losses (both past and
17 future) suffered by a victim as a result of the original sexual abuse
18 from ongoing harms suffered as a result of the continued trafficking
19 in and possession of images of the abuse. The court had "no illusion
20 that the task will be easy," and stated that "precision is neither
21 expected nor required," and the court "recognize[d] that the ultimate
22 decision will be a mix of discretion and estimation and that it may
23 result in complication and prolongation of the sentencing process."
24 Id. (internal citation and quotation marks omitted).

25 8. In arriving at the agreed upon restitution, the parties
26 have attempted to follow Galan by focusing on the harm attributable
27 solely to the defendant's conduct, and not the original contact

1 offense. The parties agree that defendant was a possessor of the
2 images in question and did not have anything to do with their
3 production. Moreover, the parties considered the victim's assertions
4 of ongoing harm due to the pain of knowing that the images of their
5 victimization are still being disseminated and shared, and considered
6 how the victims continue to endure hurt and shame knowing that others
7 may have seen the images. The parties further considered the federal
8 cases where Assistant United States Attorneys voluntarily reported
9 restitution orders. The parties also considered the mean, median,
10 and mode of the restitution awards in those cases. The parties
11 recognize, however, that they do not have reasonably reliable
12 information of post-Galan cases, or cases that have been prosecuted
13 by state and international authorities involving the victims at issue
14 in this case or the potentially large numbers of individuals who have
15 committed child pornography offenses involving the victims in this
16 case, but have escaped prosecution for their crimes to date, and who
17 may never be prosecuted for their crimes. Also, the parties
18 considered the potentially large number of future offenders who may
19 or may not be prosecuted. Finally, the parties considered the number
20 of images the defendant possessed of each victim that has sought
21 restitution in this case. The parties' agreed upon amounts for each
22 victim reflect all of these considerations.

23 9. In addition to the foregoing, government counsel reached
24 out to the attorney for each of the victims that has sought
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1 restitution in this matter to discuss the amounts set forth below.¹
2 There were no objections.

3 10. Based on the foregoing considerations, the parties hereby
4 agree that the individuals set forth below are victims in this case,
5 meaning they are individuals harmed as a result of a commission of a
6 crime under Chapter 110 of Title 18, which includes defendant's
7 crime, as provided in 18 U.S.C. § 2259(c). The parties also agree to
8 the following awards of restitution:

9 a. Victim Jessica

10 i. Restitution Amount: \$3,500

11 ii. Payable to: "Jennifer Freeman in trust for
12 Jessica," c/o The Marsh Law Firm PLLC, P.O. Box 4669 #65135, New
13 York, NY 10163-4668

14 b. Victim Misty

15 i. Restitution Amount: \$5,681

16 c. Payable to: "Jennifer Freeman in trust for Misty," c/o
17 The Marsh Law Firm PLLC, P.O. Box 4669 #65135, New York, NY 10163-
18 4668

19 d. Marineland Series

20 i. Restitution Amount: \$2,250

21 ii. Payable to: "Carol L. Hepburn in trust for
22 Sarah", c/o Carol L. Hepburn, 2722 Eastlake Avenue E. Suite 200,
23 Seattle, WA 98102

24 e. Lighthouse Series

25 i. Restitution Amount: \$3,500

26
27 ¹ Government counsel left three messages over the course of
28 three weeks for Jennifer Freeman, counsel for victims "Jessica" and
"Misty," but received no response.

1 ii. Payable to: "Sara J. Powell in trust for
2 Cassiopeia", c/o Law Office of Sara J. Powell, PLLC, 550 W. Portland
3 Street, Phoenix, AZ 85003

4 f. Victim Angela

5 i. Restitution Amount: \$2,610

6 ii. Payable to: "Marc C. Lenahan in trust for
7 Angela," c/o Lenahan Law, PLLC, 2655 Villa Creek, Suite 204, Dallas,
8 Texas 75234

9 g. 8 Kids Series

10 i. Restitution Amount: \$5,500

11 ii. Payable to: "Tanya L. Hankins in trust for John
12 Does I-V," c/o The Law Office of Erik L. Bauer, 215 Tacoma Avenue
13 South, Tacoma, Washington 98402.

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1 11. The parties further agree that the restitution amounts are
2 reasonable, suited to defendant's causal role in each victim's
3 general losses, and represent an attempt by the parties to
4 disaggregate the harm caused by defendant. The total amount of the
5 agreed upon restitution in this matter is \$23,041.

6 IT IS SO STIPULATED.

7 Respectfully submitted,

8 EILEEN M. DECKER
United States Attorney

9 LAWRENCE S. MIDDLETON
10 Assistant United States Attorney
Chief, Criminal Division

11 

12 October 3, 2016

13 Date

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15 SCOTT PAETTY
16 Assistant United States Attorney

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18 ERIC A. CHASE
19 Attorney for Defendant
20 TODD EDDIE BENSE

21 Date

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23 TODD EDDIE BENSE
24 Defendant

25 Date

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United States Attorney

9 LAWRENCE S. MIDDLETON
10 Assistant United States Attorney
Chief, Criminal Division

12 SCOTT PAETTY
13 Assistant United States Attorney



Date

10/03/16

14 ERIC A. CHASE
15 Attorney for Defendant
16 TODD EDDIE BENSE

Date

10/03/16

17 TODD EDDIE BENSE
18 Defendant

Date

10/02/2016

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